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April 17, 2007

VIA HAND DELIVERY

Lawrence Woodlock, Esq.
Senior Commission Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

RE: Sponsor Payment of PAC Fundraising Expenses

Dear Larry:

This is to follow up on our discussion at the March 14, 2007 Interested Persons Meeting concerning possible options to address the issues raised. The options I have identified include the following change options. I have not included the no-change options.

Please let me know your thoughts about these or any other options that you see if you see additional ones.

A. Background

The initial advice requests sought clarification of several points: (1) Are a sponsor's payments of a PAC's fundraising expenses "contributions"? (2) If so, are such "contributions" subject to Proposition 34 limits after the adoption of Government Code section 85303(a) and (c) as part of Proposition 34? (3) Did the 2005 *Wilson Advice Letter* apply to a sponsor's general payments for its PAC's fundraising expenses, at least to the extent that advice letter addressed the situation in which the sponsor's payment would be a non-monetary contribution to a candidate because the fundraising directly benefitted the candidate?

The following are now part of the public record on this: (1) Regulation 18215(c)(16) [excluding "fundraising expenses" from the exception to the definition of "contribution"]; (2) FPPC Bulletin discussion of the "sponsored PAC fundraising payments" issue; (3) the 2005 *Wilson Advice Letter*; (4) the two 2006 *Bell Advice Letters*.

As you correctly noted, because the definition of “contribution” can apply both to the reporting of payments addressed by chapter 4 of the Act as well as to the limitations imposed under chapter 5 of the Act, an initial question is whether it would be advisable to have two discrete regulations, one dealing with the disclosure issue and another with the limits issue.

Further, as presented, the question raises the larger issue of the scope of the Act’s terms, used in Government Code section 85303, subdivisions (a) and (c), viz., what is a contribution “made for the purpose of making contributions to candidates for elective state office” and what is a contribution “made for purposes other than making contributions to candidates for elective state office”?

B. Options

1. Issue a regulation covering the narrow issue. That regulation could be along the lines of my proposal Exhibit B to my October 5, 2006 letter. This regulation would add the term “fundraising expenses” to the existing Regulation 18215(c)(16) list, thereby creating an exception for such fundraising expenses from being considered “contributions.” The structure of this regulation would nonetheless require the reporting of the payment as if it were a contribution although not treating the payment as a contribution. This approach does not necessarily address the limits issue.
2. Issue a separate regulation with respect to the limits issue. That regulation would be along the lines of my proposal Exhibit A to my October 5, 2006, letter. This regulation would treat the sponsor payments as contributions but not subject to the limits of Government Code section 85303(a).
3. Issue a regulation covering the broader issue – scope of Government Code section 85303, subdivisions (a) and (c). This regulation would define more broadly the term “contribution made for the purpose of making contributions to candidates for state elective office” under section 85303(a) and the term contributions “other than the purpose of making contributions to candidates for state elective offices.” This regulation would be broader and more difficult to resolve than options 1 and 2.

Because there may be some additional time spent in developing or fine-tuning any of the above options, unless something like #1 or 2 is presented based totally or loosely upon my proposed Exhibits A and B, it may be advisable – and the regulated community members to

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whom I have spoken agree it would be useful – to provide interim guidance before a regulation is finalized and adopted. To that end, there are several options available to the Commission, options the Commission has chosen to employ in the past:

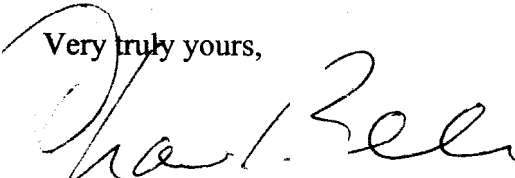
4. Pending development of a regulation, rescind the two *Bell Advice Letters*. This is a customary way for the Commission to deal with advice it no longer supports, until it can formulate a more complete response – be that by regulation or opinion – to the questions addressed by the advice. This would be a good, interim step to take.
5. Together with Option #4, provide Commission guidance to the regulated community in the form of a summary or Commission talking paper regarding the fundraising issue. This would clarify the current Commission's understanding pending the development of a regulation.

Two alternatives that appear less likely – either because the Commission already addressed the approach it wishes to take already or because they would be unlikely to deal adequately with the situation that has been fleshed out in subsequent discussions including the discussion at the Interested Persons Meeting in March.

6. Issue an Opinion.
7. Issue a new advice letter.

Thanks for the opportunity to provide some input on this issue.

Very truly yours,



Charles H. Bell, Jr.

CHB/jg

PROPOSED NEW REGULATION 18530.10 (Exhibit A)

(a) A payment made by the sponsor of a recipient committee for the purpose of defraying fundraising expenses of the committee is not a 'contribution made for the purpose of making contributions to candidates for state elective office' under Government Code section 85303, subdivision (a), unless the payment is to defray the costs of fundraising by the sponsored committee for an event at which monetary contributions are solicited for or made to a candidate for elective state office, or unless the payment of the fundraising expenses by the sponsor is made at the behest of the candidate for elective state office.

(b) A payment made by the sponsor of a recipient committee for the purpose of defraying expenses of the committee identified in 2 CCR 18215(c)(16) is not a 'contribution made for the purpose of making contributions to candidates for state elective office' under Government Code section 85303, subdivision (a), unless the payment is made to defray such expenses of the sponsored committee for an event at which monetary contributions are solicited for or made to a candidate for state elective office, or unless the payment of such expenses by the sponsor is made at the behest of the candidate for elective state office.

PROPOSED AMENDMENT OF REGULATION 18215(c)(16) (Exhibit B)

18215. Contribution.

(c) Notwithstanding any other provision of this section, the term "contribution" does not include:

(16) A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code 82047) except a candidate or other individual (see Gov't Code 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fundraising expenses as set forth in 2 CCR 18530.10, and other expenses incurred in setting up and running a sponsored committee.